



482222



Received

JAN 07 2011

Emergency Enforcement
Services Section**VIA OVERNIGHT MAIL**

January 6, 2011

Debbie Keating

Reference: SE-5J

USEPA Region 5

Superfund Division

Enforcement & Compliance Assurance Branch

Enforcement Services Section #1

77 West Jackson Blvd, SE-5J

Chicago, IL 60604-3590

RE: ESI Environmental Inc Site: 4910 West 86th / Marion County/ Indiana

Dear Ms. Keating

Titan Wheel Corporation, (Titan) received your letter dated December 20th, 2010 on December 28th, 2010.

Titan will cooperate with USEPA in resolving this matter pending the burden of proof by USEPA that the bulk storm water sent by Titan to ESI falls under the CERCLA "hazardous substance" definition as described below. Also please note that I and/or another representative of Titan Wheel Corporation will attend the meeting at your Chicago Region 5 Office on January 21, 2011.

Titan wishes to stress for the record that the bulk storm water shipped to ESI generated by Titan Wheel Corporation of Illinois, is neither a Listed, nor a Characteristic waste per 40CFR; furthermore, it does neither show any PCB components, (TSCA waste), nor any identified "hazardous substances" in accordance with CERCLA § 101(14) definitions described below:

The term "hazardous substance" means (A) any substance designated pursuant to section 1321(b)(2)(A) of Title 33, (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 6; it also defines "hazardous substance" by referencing other environmental statutes, including:

- CWA sections 311 and 307(a);
- CAA section 112;
- RCRA section 3001; and
- TSCA section 7.

TITAN INTERNATIONAL, INC.

Legal Department

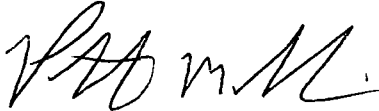
2701 SPRUCE STREET • QUINCY, ILLINOIS 62301 USA

(217) 221-4484 • FAX: (217) 228-3040

Please refer to the analytical reports and waste generation description in the exhibits attached to our November 4, 2010 response and submission. Also please note that under CERCLA and other regulations, petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated, is not a "hazardous substance". Titan believes that the storm water containing slight oil that was shipped to ESI, will meet this exemption allowed by CERCLA.

Should you have further questions, please feel free to contact me at (217) 221-4389.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. M. Shine', with a stylized, cursive script.

Patrick M. Shine
Assistant General Counsel
Titan Wheel Corporation

24
252

FedEx US Airbill
Express

FedEx
Tracking
Number

8747 6585 2227

RECIPIENT: PEEL HERE

1 From This portion can be removed for Recipient's records.

Date 1/6/11 FedEx Tracking Number 874765852227

Sender's Name Pat Shine Phone 212 221 4389

Company TITAN INTERNATIONAL INC

Address 2701 SPRUCE ST

City QUINCY State IL ZIP 62301-3473

2 Your Internal Billing Reference

3 To Recipient's Name Debbie Keating Phone 312 886-7949

Company USEPA Region 5, Superfund Division

Address Enforcement Services Section #1

Address 47 West Jackson Blvd, SE-5T

City Chicago State IL ZIP 60604-3590

HOLD Weekday
FedEx location address
REQUIRED. NOT available for
FedEx First Overnight.

HOLD Saturday
FedEx location address
REQUIRED. Available ONLY for
FedEx Priority Overnight and
FedEx 2Day to select locations.

0430264098



8747 6585 2227

Form ID No. **0215**

Recipient's Copy

4a Express Package Service

* To most locations.

Packages up to 150 lbs.

- ☐ FedEx Priority Overnight
Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☒ FedEx Standard Overnight
Next business afternoon.* Saturday Delivery NOT available.
- ☐ FedEx First Overnight
Earliest next business morning delivery to select locations.*
- ☐ FedEx 2Day
Second business day.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx Express Saver
Third business day.* Saturday Delivery NOT available.

4b Express Freight Service

** To most locations.

Packages over 150 lbs.

- ☐ FedEx 1Day Freight
Next business day.** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx 2Day Freight
Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx 3Day Freight
Third business day.** Saturday Delivery NOT available.

5 Packaging

* Declared value limit \$500.

- ☒ FedEx Envelope* ☐ FedEx Pak*
Includes FedEx Small Pak and FedEx Large Pak.
- ☐ FedEx Box ☐ FedEx Tube ☐ Other

6 Special Handling and Delivery Signature Options

- ☐ SATURDAY Delivery
NOT available for FedEx Standard Overnight, FedEx Express Saver, or FedEx 3Day Freight.
- ☒ No Signature Required
Package may be left without obtaining a signature for delivery.
- ☐ Direct Signature
Someone at recipient's address may sign for delivery. Fee applies.
- ☐ Indirect Signature
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

Does this shipment contain dangerous goods?

- One box must be checked.
- ☒ No ☐ Yes
As per attached Shipper's Declaration.
- ☐ Yes
Shipper's Declaration not required.
- ☐ Dry Ice
Dry Ice, 9, UN 1845 _____ x _____ kg
- ☐ Cargo Aircraft Only

7 Payment Bill to:

- Sender ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

Total Packages Total Weight Credit Card Auth.

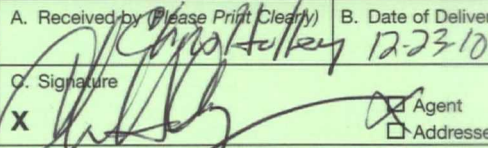
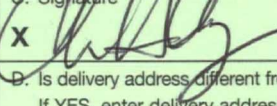
Align bottom of Peel and Stick Airbill or **605** here.

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For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	6.66
Total Post	
Sent To	Titan Wheel Corporation
Street, Apt. or PO Box	c/o Mr. Maurice Taylor, Jr.
City, State, .	CEO
	2701 Spruce St.
	Quincy, IL 62301
PS Form 3800, August 2000	
See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Received by (Please Print Clearly) B. Date of Delivery  12-23-10 C. Signature X  <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
1. Article Addressed to: Titan Wheel Corporation c/o Mr. Maurice Taylor, Jr. CEO 2701 Spruce St. Quincy, IL 62301		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7009 1680 0000 7660 6554		7009 1680 0000 7660 6554	
PS Form 3811, March 2001		Domestic Return Receipt	
		EST 6N 12/20/2010 102595-01-M-142	



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 20 2010

REPLY TO THE ATTENTION OF:

SE-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: ESI Environmental Inc Site
4910 West 86th Street, Indianapolis, Marion County, Indiana
Site ID: B5YS
General Notice of Potential Liability

Dear Sir or Madam:

The United States Environmental Protection Agency has documented the release or threat of release of hazardous substances, pollutants and contaminants into the environment from the above-referenced Site, and is planning to spend public funds to control and investigate these releases. This action will be taken by EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.* (CERCLA), unless EPA determines that such action will be done properly by a responsible party or parties. Responsible parties under CERCLA include the current and former owners and operators of the Site, and persons who generated the hazardous substances or were involved in the transport, treatment, or disposal of the hazardous substances at the Site. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), where EPA uses public funds towards the cleanup of the hazardous substances, responsible parties are liable for all costs associated with the removal or remedial action and all other necessary costs incurred in cleaning up the Site, including investigation, planning, and enforcement costs.

EPA is currently planning to conduct the following actions at the above-referenced Site:

1. Develop and implement a site-specific Health and Safety Plan, Site Security Plan, and Emergency Contingency Plan;

2. Secure the Site, as needed, to prevent unauthorized access to hazardous substances and oil in tanks and other containers;
3. Characterize acids, caustics, waste oil, tank semi-solids (sludges), and unknown wastes for treatment and/or off-site disposal;
4. Characterize the extent of Polychlorinated Biphenyl (PCB) contamination in wastes and soils at the Site;
5. Characterize the contents of tanks, containers, pits , bunkered tanks, dissolved air floatations, American Petroleum Institute oil-water separators, roll-off boxes, and solidification pits for treatment and/or off-site disposal;
6. Characterize the extent of contamination at residential properties and the golf courses impacted by past sewer overflows;
7. Remove properly characterized wastes and contaminated soils for commercial treatment /disposal;
8. Leave the Site in such a manner that storm water is properly managed and that any remaining contaminants no longer pose a threat to public health, welfare or the environment.

EPA has received information that you or your organization (you) may have owned or operated the Site or generated or transported hazardous substances that were disposed of at the Site. By this letter, EPA notifies you of your potential liability with regard to this matter and encourages you, as a potentially responsible party, to agree to reimburse EPA for costs incurred to date and to voluntarily perform or finance the response activities that EPA has determined or will determine are required at the Site. EPA is willing to discuss with you the entry of an appropriate administrative consent order under which you would perform or finance response activities and reimburse EPA for its costs. If a consent order cannot be promptly concluded, EPA may amend the unilateral Administrative Order issued to Ecological Systems, Inc. under Section 106 of CERCLA on September 29, 2010, docket number V-W-10-C-957, which will require you to perform specified work. Under Sections 106 and 107 of CERCLA, you may be liable for reimbursement of EPA's costs, for statutory penalties, and for treble damages for noncompliance with the Order. If you are a qualified small business, enclosed is an EPA Small Business Regulatory Enforcement Fairness Act information sheet, which may be helpful if you are subject to an EPA enforcement action.

Because of the conditions described above, EPA believes that response activities at the Site must be initiated as quickly as possible. Therefore, EPA does not intend to utilize the special notice procedures available under Section 122(e) of CERCLA.

You are invited to attend a meeting with EPA on January 21, 2011, to discuss the immediate concerns at the Site, the clean-up needed as a result of Ecological Systems, Inc.'s bankruptcy and abandonment of the facility, and your interest in participating in the cleanup under an EPA Administrative Settlement Agreement and Order on Consent for Removal Action (ASAOC). The meeting will be held at EPA Region 5's offices located at 77 West Jackson Boulevard, Chicago, Illinois at 2:00 p.m. central standard time in Room 331. A copy of EPA Region 5's ASAOC has been enclosed for your review.

As a potentially responsible party, you should notify EPA in writing **no later than January 14, 2011**, of your willingness to perform or finance the activities described above and to reimburse EPA for its costs. In addition, your written response should indicate whether or not you plan to participate in the meeting to be held in Chicago on January 21, 2011. Your response should be sent to:

Debbie Keating
U.S. Environmental Protection Agency, Region 5
Superfund Division
Enforcement & Compliance Assurance Branch
Enforcement Services Section #1
77 West Jackson Boulevard, SE-5J
Chicago, IL 60604-3590

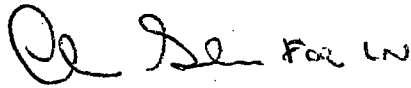
If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your potential responsibility in connection with the Site and that you have declined any involvement in performing the response activities.

Your response should indicate the appropriate name, address, and telephone number for further contact with you. If you are already involved in discussions with state or local authorities, engaged in a voluntary cleanup action, or involved in a lawsuit regarding this Site, you should continue such activities as you see fit. This letter is not intended to advise you or direct you to restrict or discontinue any such activities already underway; however, you are advised to report the status of those discussions or actions in your response to this letter and to provide a copy of your response to any other parties involved in those discussions or actions.

If you need further information regarding this letter, you may contact Nola Hicks of the EPA Office of Regional Counsel at (312) 886-7949.

Due to the nature of the problem at this facility and the attendant legal ramifications, EPA strongly encourages you to submit a written response within the time frame specified herein. We hope you will give this matter your immediate attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Nachowicz".

Linda Nachowicz, Chief
Emergency Response Branch #2

Enclosures

cc: Mr. Harry Atkinson
Chief, State Cleanup Section, Indiana Department of Environmental Management

Mr. Richard Wise
Assistant Administrator, Department of Public Works, Office of Environmental Services, City of Indianapolis

Mr. Robert Darnell
Trial Attorney, Environmental Justice Section, U.S. Department of Justice

ESI ENVIRONMENTAL INC SITE
Indianapolis, Indiana (B5YS)

List of Potentially Responsible Parties Receiving General Notice of Potential Liability
Letter Dated December 20, 2010

Safety-Kleen, Inc.
c/o Mr. Ronald Haddock
CEO
5360 Legacy Drive, Suite 100
Plano, Texas 75024

Heritage-Crystal Clean, Inc.
c/o Mr. Joseph Chalhoub
President
2175 Point Boulevard, Suite 375
Elgin, Illinois 60123

Nucor Corporation
c/o Mr. Daniel DiMicco
President
1915 Rexford Road
Charlotte, North Carolina 28211

Héritage Environmental Services, LLC
c/o Mr. William McDaniel
President
7901 West Morris Street
Indianapolis, Indiana 46231

Midwest Environmental Services, Inc.
c/o Mr. Doug Gronauer
President
420 ½ South Francis
Brownstown, Indiana 47220

Cummins, Inc.
c/o Mr. N. Thomas Linebarger
President
500 Jackson Street
Columbus, Indiana 47201

Illini Environmental, Inc.
c/o Mr. Mark Flood
President
8895 California Drive
Caseyville, Illinois 62232

Ultra-Environmental Services, Inc.
c/o Mr. Terry J. Klopstein
President
1447 Production Drive
Burlington, Kentucky 41005

Marathon Petroleum Company LLC
c/o Mr. Gary Heminger
President
539 South Main Street
Findlay, Ohio 45840

Warrior Oil Service, Inc.
c/o Mr. Joseph Snedegar
President
809 Overstreet Street
Franklin, Indiana 46131

Armor Environmental Services, Inc.
c/o Mr. Tony Livengood
President
101 South Park Drive
Mt. Pleasant, Tennessee 38474

Buckeye Terminals, LLC
c/o Mr. David J. Martinelli
Member
5002 Buckeye Road
Emmaus, Pennsylvania 18049

Enterprise Waste Oil Company
c/o Mr. Wayman Pritchard
President
5201 North Middlebrook Pike
Knoxville, Tennessee 37921

Future Environmental, Incorporated
c/o Mr. Stephen A. Lempera
President
19701 South 97th Avenue
Mokena, Illinois 60448

Universal Environmental Services, LLC
c/o Mr. Bernard Markey
Director
411 Dividend Drive
Peachtree, Georgia 30269

Liquid Waste Removal, Inc.
c/o Gary J. Bush
President
500 Polk Street, Suite 100
Greenwood, Indiana 46143

NSK Corporation
c/o Mr. Tom Rouse
President
4200 Goss Road
Ann Arbor, Michigan 48105

I/N Tek, I/N Kote L.L.P.
c/o Mr. Gary V. Asperen
Partner
30755 Edison Road
New Carlisle, Indiana 46552

Alcoa, Inc.
c/o Mr. Richard B. Kelson
President
201 Isabella Street
Pittsburgh, Pennsylvania 15212

Titan Wheel Corporation
c/o Maurice Taylor, Jr.
CEO
2701 Spruce Street
Quincy, Illinois 62301

Commonwealth Aluminum Concast Inc.
c/o Mr. Paul Platek
General Manager
7319 Newport Road S.E.
Uhrichsville, Ohio 44683

Caterpillar, Inc.
c/o Mr. Douglas Oberhelman
CEO
100 N.E. Adams Street
Peoria, Illinois 61629

Pettit Environmental, Inc.
c/o Mr. Ralph Pettit
President
1931 Stout Field West Drive
Indianapolis, Indiana 46241

Panhandle Eastern Pipe Line Company, LP
c/o Mr. Robert Bond
President
5444 Westheimer Road
Houston, Texas 77056

Metaldyne LLC
c/o Mr. Thomas Amato
President
47659 Halyard Drive
Plymouth, Michigan 48170

Allison Transmission, Inc.
c/o Mr. Lawrence Dewey
CEO
4700 West 10th Street
Indianapolis, Indiana 46222

RS Used Oil Services, Inc.
c/o Mr. Lee Plankis
Manager
25903 South Ridgeland Avenue
Monee, Illinois 60449

Action Environmental, Inc.
c/o Mr. Edward L. Black
President
5449 Keystone Drive
Fort Wayne, Indiana 46825

ESI ENVIRONMENTAL INC SITE
Indianapolis, Indiana (B5YS)

List of Potentially Responsible Parties Receiving Separate
General Notice of Potential Liability and Request for Information
Letter Dated December 20, 2010

Gladieaux Processing, LLC
c/o Mr. Michael J. Gladieux
Manager
4133 New Haven Avenue
Fort Wayne, Indiana 46803

Marathon Pipe Line LLC
c/p Marathon Oil Co
c/o Mr. Clarence Cazalot
President
5555 San Filipe Street
Houston, Texas 77056

Delphi Thermal & Interior
c/o Mr. James A. Bertrand
President
8815 Thomas Lane
West Jefferson, Ohio 43162

Shell Oil Company
c/o Mr. Marvin Odom
President
910 Louisiana Street
Houston, Texas 77002

Klor-Kleen
c/o Mr. Doug Gronauer
President
3188 Spring Grove Avenue
Cincinnati, Ohio 45225

GEM Environmental Management Inc.
for Victory Environmental, Inc.
c/o Mr. Timothy J. Kozoil
President
3191 West Temple Street
Pomona, California 91768

Noco Energy Corporation
c/o Mr. James Newman
President
2440 Sheridan Drive
Tonawanda, New York 14150

Haynes International, Inc.
c/o Anastacia S. Killan
President
1020 West Park Avenue
Kokomo, Indiana 46904

Johnson Controls, Inc.
c/o Mr. Stephen Roell
President
5757 North Green Bay Avenue
Milwaukee, Wisconsin 53209

Kinder Morgan, Inc.
c/o C. Park Shaper
President
500 Dallas Street, Suite 1000
Houston, Texas 77002

Nuplex Resins LLC
c/o Mr. Gregory A. Wyras
Manager
4730 Crittenden Drive
Louisville, Kentucky 40209

OSI Environmental
c/o Mr. Patrick Tracey
Manager
300 Fayal Road
Eveleth, Minnesota 55734

Raybestos Powertrain, LLC
c/o Mr. John Butz
President
711 Tech Drive
Crawfordsville, Indiana 47933

Bridgestone Metalpha U.S.A., Inc.
c/o Mr. Ken Yamasaki
President
570 International Boulevard
Clarksville, Tennessee 37040

Delphi Automotive Systems, LLP
c/o Mr. Rodney O'Neal
President
5725 Delphi Drive
Troy, Michigan 48098

American Enviro Services
c/o Mr. Kevin Schroeder
President
7131 Savannah Drive
Newburgh, Indiana 47630

Covidien Inc. for Mallinckrodt, Inc.
c/o Mr. Charles Dockendorff
Vice President
15 Hampshire Street
Mansfield, Massachusetts 02048

Enterprise Products Partners, L.P. for Teppco
c/o W. Randall Fowler
Executive Vice President
1100 Louisiana Street
Houston, Texas 77002

BP Products North America, Inc.
c/o R.A. Malone
President
501 Westlake Park
Houston, TX 77079

Yushiro Manufacturing America, Inc.
c/o Aisaku Ota
President
783 West Mausoleum Road
Shelbyville, IN 46176



Office of Enforcement and Compliance Assurance
INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Compliance Assistance Centers

(www.assistancecenters.net)

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

Agriculture

(www.epa.gov/agriculture or 1-888-663-2155)

Automotive Recycling Industry

(www.ecarcenter.org)

Automotive Service and Repair

(www.ccar-greenlink.org or 1-888-GRN-LINK)

Chemical Industry

(www.chemalliance.org)

Construction Industry

(www.cicacenter.org or 1-734-995-4911)

Education

(www.campuserc.org)

Healthcare Industry

(www.hercenter.org or 1-734-995-4911)

Metal Finishing

(www.nmfrf.org or 1-734-995-4911)

Paints and Coatings

(www.paintcenter.org or 1-734-995-4911)

Printed Wiring Board Manufacturing

(www.pwbrc.org or 1-734-995-4911)

Printing

(www.pneac.org or 1-888-USPNEAC)

Transportation Industry

(www.transource.org)

Tribal Governments and Indian Country

(www.epa.gov/tribal/compliance or 202-564-2516)

US Border Environmental Issues

(www.bordercenter.org or 1-734-995-4911)

The Centers also provide State Resource Locators

(www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page

www.epa.gov

Small Business Gateway

www.epa.gov/smallbusiness

Compliance Assistance Home Page

www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance

www.epa.gov/compliance

Voluntary Partnership Programs

www.epa.gov/partners



U.S. EPA SMALL BUSINESS RESOURCES

Hotlines, Helplines & Clearinghouses

(www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

Clean Air Technology Center

(www.epa.gov/ttn/catc or 1-919-541-0800)

Emergency Planning and Community Right-To-Know Act

(www.epa.gov/superfund/resources/infocenter/epcra.htm or 1-800-424-9346)

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.

(www.epa.gov/sbo or 1-800-368-5888)

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers (www.epa.gov/clearinghouse)

National Response Center to report oil and hazardous substance spills.

(www.nrc.uscg.mil or 1-800-424-8802)

Pollution Prevention Information Clearinghouse

(www.epa.gov/opptintr/ppic or 1-202-566-0799)

Safe Drinking Water Hotline

(www.epa.gov/safewater/hotline/index.html or 1-800-426-4791)

Stratospheric Ozone Refrigerants Information

(www.epa.gov/ozone or 1-800-296-1996)

Toxics Assistance Information Service also includes asbestos inquiries.

(1-202-554-1404)

Wetlands Helpline

(www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

EPA's Small Business Ombudsman

(www.epa.gov/sbo or 1-800-368-5888)

Small Business Environmental Homepage

(www.smallbiz-enviroweb.org or 1-724-452-4722)

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated,

businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

The Small Business Compliance Policy

(www.epa.gov/compliance/incentives/smallbusiness)

Audit Policy

(www.epa.gov/compliance/incentives/auditing)

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

[Site Name]

[City or Town, County, State]

Respondents:

[Listed in Attachment A]

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

Docket No. _____

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C. §§
9604, 9606(a), 9607 and 9622

DRAFT

TABLE OF CONTENTS

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and Respondents. This Settlement Agreement provides for the performance of removal actions by Respondents and the reimbursement of certain response costs incurred by the United States at or in connection with the property located at [insert address or descriptive location of Site] in [City or Town, County, State], the "[insert name] "Site" or the "Site".

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"). This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

3. U.S. EPA has notified the State of _____ (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. U.S. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections ____ (Findings Of Fact) and ____ (Conclusions Of Law And Determinations) of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon U.S. EPA and upon Respondents and their heirs, successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance

with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section ____ (Effective Date).

c. "Future Response Costs" shall mean all costs, including direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement on or after the Effective Date. Future Response Costs shall also include all costs, including direct and indirect costs, incurred prior to the Effective Date, but paid after that date and all costs, including direct and indirect costs, paid by the United States in connection with the Site between ____ and the Effective Date".

d. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

e. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

f. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section ____ (Severability/Integration/Attachments)). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

g. "Parties" shall mean U.S. EPA and Respondents.

h. "Past Response Costs" shall mean all costs, including, but not limited to, direct and

indirect costs, that the United States paid at or in connection with the Site through [insert date.]

h. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

i. "Respondents" shall mean [those Parties identified in Attachment A].

j. "Site" shall mean the _____ Superfund Site, encompassing approximately _____ acres, located at [address or description of location] in [insert name of City, County, State] [and depicted generally on the map attached as Attachment B].

k. "State" shall mean the State of _____.

l. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

m. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under [insert appropriate State statutory citation].

n. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

9. Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

a.

b.

c.

d.

e.

f.

g.

h.

i.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, U.S. EPA has determined that:

a. The [insert name] Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes [a] "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.

i. Respondents [insert names] are the "owner(s)" and/or "operator(s)" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

ii. Respondents [insert names] are the "owners" and/or "operators" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and/or persons who arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3); and/or persons who accept or accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

iii. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. §§ 9601(22) and 9601(8).

e. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR §300.415(b)(2). These factors include, but are not limited to, the following:

i. Actual or potential exposure to nearby human populations, animals, or the food chain

from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the existence of _____.

ii. Actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the existence of _____.

iii. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release; this factor is present at the Site due to the existence of _____.

iv. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of _____.

v. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Site due to the existence of _____.

vi. Threat of fire or explosion; this factor is present at the Site due to the existence of _____.

vii. The unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Settlement Agreement at the Site because _____.

viii. Other situations or factors that may pose threats to public health or welfare or the environment; this factor is present at the Site due to the existence of _____.

f. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

11. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

12. Respondents shall retain one or more contractors to perform the Work and shall notify U.S. EPA of the name(s) and qualifications of such contractor(s) within business days of the Effective Date. Respondents shall also notify U.S. EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least business days prior to commencement of such Work. U.S. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If U.S. EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within business days of U.S. EPA's disapproval. The contractor must demonstrate compliance with American National Standards Institute/American Society for Quality Control ("ANSI/ASQC") E-4-2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared consistent with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002), or equivalent documentation as required by U.S. EPA. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the On-Scene Coordinator ("OSC") and Regional quality assurance personnel to the Site file.

13. Within business days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to U.S. EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. U.S. EPA retains the right to disapprove of the designated Project Coordinator. If U.S. EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name, address, telephone number, and qualifications within business days following U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

14. U.S. EPA has designated _____ of the Emergency Response Branch (#1 or #2), Region 5, as its OSC. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at [insert OSC's address]. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post consumer waste paper content where possible) and using two-sided copies.

15. U.S. EPA and Respondents shall have the right, subject to **Paragraphs 12 and 13**, to change their respective designated OSC or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

16. Respondents shall perform, at a minimum, the following removal activities:

- a.
- b.
- c.
- d.
- e.
- f.
- g.

17. Work Plan and Implementation.

a. Within 10 business days after the Effective Date, Respondents shall submit to U.S. EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 16 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. The Work Plan shall include a Quality Assurance Project Plan ("QAPP"). The following documents shall be used for the development of QAPPs for Region 5 Superfund sites:

- The Uniform Federal Policy for Quality Assurance Projects Plans ("UFP-QAPP"), OSWER Directive 9272.0-17; [the QAPP format can be found at <http://www.epa.gov/fedfac/documents/qualityassurance.htm>];
- EPA Requirements for Quality Assurance Project Plans EPA QA/R-5, March 2001, Reissued May 2006.

The following guidance may be used in conjunction with the requirements above:

- Guidance for the Quality Assurance Project Plans EPA QA/G-5, December 2002.
- Guidance on Choosing a Sampling Design for Environmental Data Collection EPA QA/G-5S, December 2002.

b. U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If U.S. EPA requires revisions, Respondents shall submit a revised draft Work Plan within 7 business days of receipt of U.S. EPA's notification of the required revisions. Respondents shall implement the Work Plan as approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written U.S. EPA approval pursuant to **Paragraph 16(b)**.

18. Health and Safety Plan. Within 10 business days after the Effective Date, Respondents shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared consistent with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If U.S. EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA and shall implement the plan during the pendency of the removal action.

19. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001, Reissued May 2006)," or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for QA monitoring. Respondents shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity, unless shorter notice is agreed to by U.S. EPA. U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary. Upon request, U.S. EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

20. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by U.S. EPA, Respondents shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon U.S. EPA approval, Respondents shall implement such controls and shall provide U.S. EPA with documentation of all post-removal site control arrangements.

21. Reporting.

a. Respondents shall submit a written progress report to U.S. EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of U.S. EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondents shall submit 3 copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by U.S. EPA, Respondents shall submit such documents in electronic form.

c. Respondents who own or control property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to U.S. EPA of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with the immediately proceeding sentence and Sections ____ (Site Access) and ____ (Access to Information).

22. Final Report. Within 60 calendar days after completion of all Work required by Section ____ (Work To Be Performed) of this Settlement Agreement, Respondents shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with the guidance set forth in "Superfund Removal Procedures: Removal Response Reporting - POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the

preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

23. Off-Site Shipments.

a. Respondents shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 23(a) and 23(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

24. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide U.S. EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

25. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 10 business days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify U.S. EPA if after

using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section __ (Payment of Response Costs).

26. Notwithstanding any provision of this Settlement Agreement, U.S. EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

27. Respondents shall provide to U.S. EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to U.S. EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

28. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, or if U.S. EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

29. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

30. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering

data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

31. Until 6 years after Respondents' receipt of U.S. EPA's notification pursuant to Section ____ (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 6 years after Respondents' receipt of U.S. EPA's notification pursuant to Section ____ (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

32. At the conclusion of this document retention period, Respondents shall notify U.S. EPA at least 60 days prior to the destruction of any such records or documents, and, upon request by U.S. EPA, Respondents shall deliver any such records or documents to U.S. EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

33. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by U.S. EPA or the State or the filing of suit against it regarding the Site and that it has fully complied and will fully comply with any and all U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

34. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j).

In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondents shall identify ARARs in

the Work Plan subject to U.S. EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

35. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response Branch (#1 or #2), Region 5 at (312) 353-2318, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and U.S. EPA takes such action instead, Respondents shall reimburse U.S. EPA all costs of the response action consistent with the NCP pursuant to Section __ (Payment of Response Costs).

36. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at (312) 353-2318 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

37. The OSC shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

38. Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondents shall pay to U.S. EPA \$ _____ for Past Response Costs. Payment shall be made to U.S. EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures that U.S. EPA Region 5 will provide Respondents, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number _____ and, if any, the U.S. EPA docket number for this action. Respondents shall: 1) complete Respondents' required bank form; 2) include Federal Reserve Bank of New York, ABA #021030004 on the bank form; 3)

include the U.S. EPA Account #68010727 on the form; 4) include the SWIFT address FRNYUS33, 33 Liberty Street, New York, NY, 10045; 5) include "D68010727 Environmental Protection Agency" in Field Tag 4200 of the Fedwire message; and, 6) include a statement identifying the name and address of the party(ies) making payment, the Site name, and the U.S. EPA Region and Site/Spill ID Number _____.

When the Past Response Costs identified in the above Paragraph are less than \$10,000, payment may, in lieu of the described EFT method, be made by certified or cashier's check made payable to "U.S. EPA Hazardous Substance Superfund". Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number _____, and, if any, the U.S. EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

b. At the time of payment, Respondents shall send notice that such payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to _____, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590.

c. The total amount to be paid by Respondents pursuant to Paragraph 38(a) shall be deposited in the [Site Name] Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

[If the entire payment will be deposited in the U.S. EPA Hazardous Substance Superfund:]

[c. The total amount to be paid by Respondents pursuant to Paragraph 38(a) shall be deposited in the U.S. EPA Hazardous Substance Superfund.]

[If the payment will be split between the U.S. EPA Hazardous Substance Superfund and a special account:]

[c. Of the total amount to be paid by Respondents pursuant to Paragraph 38(a), [\$_____ or _____%] shall be deposited in the U.S. EPA Hazardous Substance Superfund and [\$_____ or _____%] shall be deposited in the [Site Name] Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.]

39. Payments for Future Response Costs.

a. Respondents shall pay U.S. EPA all Future Response Costs consistent with the NCP. On a periodic basis, U.S. EPA will send Respondents a bill requiring payment that consists of an Itemized Cost Summary. Respondents shall make all payments within 30 calendar days of receipt of each bill requiring payment, except as otherwise provided in **Paragraph 41** of this Settlement Agreement according to the following procedures

i. If the payment amount demanded in the bill is for \$10,000 or greater, payment shall be made to U.S. EPA by EFT in accordance with current Electronic Funds Transfer ("EFT") procedures to be provided to Respondents by U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number ____, and, if any, the U.S. EPA docket number for this action. **Respondents shall 1) complete Respondents' required bank form; 2) include Federal Reserve Bank of New York, ABA #021030004 on the bank form; 3) include the U.S. EPA Account #68010727 on the form; 4) include "D 68010727 Environmental Protection Agency" in Field Tag 4200 of the Fedwire message; and 5) include the statement identifying the name and address of the party(ies) making payment, the Site name, the U.S. EPA Region and Site/Spill ID Number.**

ii. If the amount demanded in the bill is \$10,000 or less, the Settling Respondents may, in lieu of the procedures in **subparagraph 39(a)(i)**, make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund", referencing the name and address of the party(ies) making the payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number ____, and, if any, the U.S. EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 371531
Pittsburgh, Pennsylvania 15251-7531

b. At the time of payment, Respondents shall send notice that payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to ____, Assistant [Associate] Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590.

40. In the event that the payment for Past Response Costs is not made within 30 days of the Effective Date, or the payments for Future Response Costs are not made within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section ____ (Stipulated Penalties).

41. Respondents may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, only if Respondents allege that U.S. EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs to U.S. EPA as specified in **Paragraph 39** on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the persons listed in **Paragraph 39(b)** above. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

42. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

43. If Respondents object to any U.S. EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify U.S. EPA in writing of their objection(s) within 10 calendar days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which such party relies. U.S. EPA shall provide its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding Paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement.

44. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

45. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

46. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify U.S. EPA orally within 24 hours of when Respondents first knew that the event might cause a delay. Within 7 calendar days thereafter, Respondents shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall be grounds for U.S. EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a *force majeure*, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

47. If U.S. EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, U.S. EPA will notify Respondents in writing of its decision. If U.S. EPA agrees that the delay is attributable to a *force majeure* event, U.S. EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

48. Respondents shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 49 and 50 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section ____ (Force Majeure). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of this Settlement Agreement within the specified time schedules established by and approved under this Settlement Agreement.

49. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in **Paragraph 49(b)**:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ _____	1st through 14th day
\$ _____	15th through 30th day
\$ _____	31st day and beyond

b. Compliance Milestones

50. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs _____ :

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ _____	1st through 14th day
\$ _____	15th through 30th day
\$ _____	31st day and beyond

51. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section ____ (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Paragraph 41 of Section ____ (Dispute Resolution); during the period, if any, beginning on the 21st day after U.S. EPA submits its written statement of position until the date that the Director of the Superfund Division issues a final decision regarding such disputes. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

52. Following U.S. EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, U.S. EPA may give Respondents written notification of the failure and describe the noncompliance. U.S. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA has notified Respondents of a violation.

53. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondents' receipt from U.S. EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section ____ (Dispute Resolution). All payments to U.S. EPA under this Section shall be paid by certified or cashier's check(s) made payable to "U.S. EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental

Protection Agency, Region 5, P.O. Box 371531, Pittsburgh, Pennsylvania 15251-7531, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Site/Spill ID Number ____, the U.S. EPA Docket Number, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to U.S. EPA as provided in **Paragraph 39(b)**.

54. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

55. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 20 days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision.

56. If Respondents fail to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to **Paragraph 53**. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Should Respondents violate this Settlement Agreement or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY U.S. EPA

57. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, U.S. EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon receipt by U.S. EPA of the Past Response Costs due under Section __ (Payment of Response Costs) of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections __ (Payment of Response Costs) and ____ (Stipulated Penalties) of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, payment of Future

Response Costs pursuant to Section __ (Payment of Response Costs). This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY U.S. EPA

58. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

59. The covenant not to sue set forth in Section __ (Covenant Not to Sue by U.S. EPA) above does not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

60. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response

Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the [State] Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph(s) __ waivers of claims, below) These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 59 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

61. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if U.S. EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site

XXII. OTHER CLAIMS

62. By issuance of this Settlement Agreement, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

63. Except as expressly provided in Section __ (Covenant Not to Sue by U.S. EPA),

nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

64. No action or decision by U.S. EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION PROTECTION

65. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Respondents have, as of the Effective Date, resolved their liability to the United States for the Work, Past Response Costs, and Future Response Costs.

c. Except as provided in Section ____ (Covenant Not To Sue By Respondents), Paragraph[s] __, of this Settlement Agreement nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Section 113(f)(2) and (3), 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action, and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

XXIV. INDEMNIFICATION

66. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United

States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States. The Federal Tort Claims Act (28 U.S.C. §§ 2671, 2680) provides coverage for injury or loss of property, or injury or death caused by the negligent or wrongful act or omission of an employee of U.S. EPA while acting within the scope of his or her employment, under circumstances where U.S. EPA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

67. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

68. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. MODIFICATIONS

69. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by U.S. EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

70. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 69.

71. No informal advice, guidance, suggestion, or comment by the OSC or other U.S. EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVI. NOTICE OF COMPLETION OF WORK

72. When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including, *e.g.*, post-removal site

controls, payment of Future Response Costs, and record retention, U.S. EPA will provide written notice to Respondents. If U.S. EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, U.S. EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVII. FINANCIAL ASSURANCE

Within 30 days of the Effective Date, Respondents shall establish and maintain financial security in the amount of \$ _____ in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents; or
- e. A demonstration that one or more of the Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f).

f. If Respondents seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph __ (a) of this Section, Respondents shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Respondents seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph __ (d) or (e) of this Section, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that U.S. EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondents shall, within 30 days of receipt of notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed in Paragraph __ of this Section. Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement.

g. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph __ of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to U.S. EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by U.S. EPA. In the event of a dispute, Respondents may

reduce the amount of the security in accordance with the written decision resolving the dispute.

h. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and approval by U.S. EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVIII. INSURANCE

a. At least days prior to commencing any on-Site work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of ___ million dollars, combined single limit. Within the same time period, Respondents shall provide U.S. EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to U.S. EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXIX. SEVERABILITY/INTEGRATION/ATTACHMENTS

73. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

74. This Settlement Agreement and its attachments constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. [The following attachments are incorporated into this Settlement Agreement: _____.]

XXX. EFFECTIVE DATE

75. This Settlement Agreement shall be effective upon receipt by Respondents of a copy of

this Settlement Agreement signed by the Director, Superfund Division, U.S. EPA Region 5

The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party they represent to this document.

Agreed this ____ day of _____, 2____.

For Respondent

By

Title _____

IN THE MATTER OF:

[SITE NAME]
[CITY, STATE]

It is so ORDERED and Agreed this ____ day of _____, 2____.

BY:

Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5

STATE AGENCY SUPERFUND PROGRAM MANAGER

Indiana:

**Mr. Bruce Palin, Assistant Commissioner
Indiana Department of Environmental
Management
Office of Land Quality
100 North Senate Avenue
Room ICGN 1307
Indianapolis, Indiana 46204-2251**

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REMOVAL PROGRAM

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